

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PALO ALTO UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013051146

ORDER GRANTING CONTINUANCE
OF DUE PROCESS HEARING AND
SETTING NEW HEARING,
PREHEARING CONFERENCE AND
MEDIATION DATES

This matter came on for hearing before Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings (OAH), State of California, on August 6, 2013, in Palo Alto, California. The hearing was scheduled for August 6 through 8, 13, and 14, 2013.

Attorney Melanie D. Seymour represented the Palo Alto Unified High School District (District). District's Director of Special Education Dr. Holly Ward was present. District's Special Education Coordinator Damien Huertas was also present. Parents represented Student and were assisted by advocate Carina Rossner, who acted as their spokesperson. Student also attended the hearing.¹ Armando Galvez was present and provided Spanish translation services.

Based on discussions with the parties on the record, no substantive hearing was held and the hearing was continued. The following order is issued based on the orders made during the hearing:

1. Open Hearing: A telephonic prehearing conference (PHC) was held on July 29, 2013, during which OAH provided an interpreter for Parents. Student was informed of his right to have an open or closed hearing, and Parents were directed to inform the ALJ at the outset of the hearing whether they wished the hearing to be completely open to the public or closed. At the beginning of the hearing, Parents were accompanied by members of the public. District requested to also invite members of the public (District staff) to observe the hearing. The ALJ verified on the record that Student and Parents understood that Student has a right to have a closed and confidential hearing; and that if open, the District also had a right to invite people. Student and Parents conferred confidentially and reported their decision on the record to have an open hearing. Accordingly, subject to any orders to exclude witnesses,

¹ Student's sister, and members of the public were also present during the hearing.

the public remained present for an open hearing. Since the hearing is being continued, Student retains the right to request an open or closed hearing.

2. Motion for Continuance: On August 5, 2013, Student filed a request for a continuance of the case because Parents are not prepared to represent Student for the hearing and requested additional time to seek legal counsel, to understand and prepare for the hearing, and to review District's voluminous records. In addition, Student requested translation of over 500 pages of District records produced to them on July 30, 2013. On August 5, 2013, District filed a reply opposing a continuance and arguing that Student has had sufficient time to seek representation; District produced to Parents Spanish translations of its documents to the extent they existed; and District was not required to provide written Spanish translations of all of its other hearing exhibits.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

District's request for a due process hearing (complaint) was filed on May 23, 2013, in which District notified OAH that Parents speak Spanish and require Spanish translations and interpreters. OAH served Parents with an English language version of its initial scheduling order on May 30, 2013, and a Spanish version was served on Parents on June 11, 2013. On June 17, 2013, District filed a request for a continuance based on unavailability of witnesses. During a telephonic PHC on the same date, in which Parents were provided an interpreter, OAH granted District's motion and the hearing was continued, to begin on August 6, 2013. OAH issued an English version of the PHC order on June 18, 2013, to both District and Parents. However, there is no record that OAH ordered or served a Spanish version of that PHC order on Parents.

On July 29, 2013, OAH conducted another telephonic PHC, in which Parents were provided translation services. The ALJ conducting the PHC provided Parents detailed instructions on how to prepare and serve their documentary exhibits on District by July 30, 2013. An English version of the PHC order was served on District that date. However, there

is no record that OAH served the English version of this PHC order on Parents. A Spanish version of the PHC order was not served on Parents until August 1, 2013, after the deadline to exchange evidence.

On August 1, 2013, Parents filed a request with OAH to supplement District's disclosed exhibits because they believed documents were missing. The motion reflected Parents' confusion about preparing exhibits for disclosure and hearing. On the same date, Parents served District and OAH with about 54 pages of documents. However, Ms. Rossner established at hearing, by showing the ALJ and the parties, that Parents have a "suitcase" or office bag of jumbled documents pertaining to Student's education. Ms. Rossner explained that, beginning on Saturday, August 3, 2013, she spent the weekend sorting through the papers, and that the documents Parents selected to produce for hearing last week did not represent an organized and informed decision about which documents would be important for hearing. In addition, Ms. Rossner explained that Parents still do not understand what the hearing is about and are not prepared to select or present witnesses and documents at this time.²

District conceded that its exhibit binder produced to Student last week and presented to the ALJ at hearing contained only English versions of its individualized education programs (IEP's) at issue in this case. Ms. Seymour represented that District's Spanish versions of the IEP's were not produced to Parents on July 30, 2013, in compliance with the PHC order or the Education Code, because they were "not available" to her, but did not otherwise explain the circumstances. District's argument that Parents were not prejudiced by advance disclosure of the Spanish versions of the pertinent IEP's was rejected as it was clear Parents' own records were completely disorganized. Thus, even if District delivered Spanish versions of the IEP's to Parents at or around the time of each IEP team meeting in 2012 and 2013, District was nevertheless required to deliver the Spanish versions to them in its evidence binder and did not do so.

While Student has had almost two months within which to seek counsel, Parents' representation that they have been diligent in seeking help was not controverted. In addition, it was clear that Parents have not understood the hearing process and have been overwhelmed with attempting to advocate for their son and organize voluminous records, which has been complicated by delays in receiving Spanish versions of OAH orders.

² District's complaint contains three issues: (a) whether District's March 29, 2012 IEP, as amended, offered Student a free appropriate public education (FAPE); (b) whether the May 20, 2013 IEP, as amended, offered Student a FAPE; and (c) whether the District may conduct a mental health evaluation of Student pursuant to its assessment plan of March 4, 2013. During the hearing, the ALJ explained that, should the evidence show District's IEP offers and assessment plan complied with the law, OAH could grant District the right to implement the IEP's and assess Student without Parents' consent.

However, District was persuasive that no lengthy continuance should be granted because Student has been out of school since November 2012, school starts on August 12, 2013, and District stands ready to serve him. In addition, as noted above, District has the right to proceed to hearing without undue delay.

Weighing all the equities, Student showed good cause for a reasonable continuance of about six weeks to afford Parents time to prepare for hearing and/or seek legal representation. Based on the foregoing, no lengthy continuance is granted, and no further continuance will be granted without a substantial showing of good cause. Even if Parents do not retain legal counsel, they must diligently proceed to prepare for hearing. Accordingly, Student's motion to continue the hearing was granted.

3. Hearing Dates, Times, and Location: The remaining hearing dates were vacated. This matter is set for the following dates and times and shall be held at the District's offices.³

Mediation:	August 22, 2013, at 9:30 a.m.
Prehearing Conference:	September 6, 2013, at 10:00 a.m.
Hearing	September 18, 2013, at 10:00 a.m., September 19, and 20, 2013, at 9:00 a.m., ⁴ October 1, 2013, at 10:00 a.m. October 2, 2013, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

4. Motion to Translate Documents: Student asked OAH to order District to translate all exhibits disclosed in District's exhibit binder into Spanish.⁵ As noted during the hearing, District is required by law to translate IEP's into the primary language of the

³ The hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing.

⁴ ALJ Johnson agreed to conduct the hearing on Friday, September 20, 2013. However, holding a hearing on Fridays is discretionary and OAH reserves the right to change that date due to operational needs.

⁵ Student's motions regarding illegible District documents and poor translations are reserved for hearing as they are relevant to whether a document would actually be admitted into evidence, and/or what weight the ALJ might give to the document if admitted.

parents. In addition, assessment plans and related documents are required to be translated. On the record, District delivered to Student's advocate Spanish versions of the IEP's at issue in this case. District established that the assessment plan in its binder contains both an English and Spanish version. In connection with the exhibit disclosure order at Paragraph 6 below, District shall also timely deliver to Student, in advance of the hearing, Spanish versions of any other assessment plans, assessments, and IEP's, if they were not already included in its evidence binder. District's objection that it is not otherwise legally required to translate all remaining English language documents in its exhibit binder is sustained at this time.

In general, OAH is obligated to provide a fair and impartial hearing including providing Parents the opportunity to participate in the proceeding, and is required by law to provide an interpreter to translate oral and written statements during the hearing. If Student believes that Parents need a document, disclosed by District, to be translated into Spanish in advance of the hearing, Student may file a written request with OAH **not less than three business days prior to the PHC on September 6, 2013**. The request should identify the document with specificity, and explain why their private resources (including friends and family who speak and read English) were insufficient to apprise them of the content of the document, and why they need to have it translated prior to hearing. This order does not rule on the merits of any such request.

The ALJ also noted on the record that Student served his documentary exhibits on OAH on August 1, 2013, many of which were in Spanish. When OAH receives documents in the native language of the parent or guardian, it has them translated for the record. OAH therefore ordered the documents to be translated from Spanish to English, where appropriate. Accordingly, OAH staff shall forthwith serve both parties with the English translations of Student's exhibits obtained by OAH.

5. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party without need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

6. Amended PHC Statements: Should the parties make any material changes to their PHC statements previously filed with OAH, including their respective lists of witnesses and exhibits, they shall file amended PHC statements **not less than three business days prior to the PHC on September 6, 2013**.

7. Other Matters: All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the continued PHC.

8. Settlement: The parties are encouraged to participate in voluntary mediation and negotiate to reach an agreement before the due process hearing. Dates for the PHC and the hearing will not be cancelled until a letter of withdrawal or request for dismissal with the signature page of a signed settlement agreement has been received by OAH. If a settlement agreement has been executed but is subject to approval of the school board, the parties may file a motion for OAH to vacate the PHC and hearing dates and set a telephonic status conference for a date following board approval. If an agreement in principle is reached, the parties should attend the scheduled PHC and the hearing unless different arrangements have been agreed upon by the assigned ALJ, or otherwise ordered by OAH.

9. Failure to comply: Failure to comply with this order may result in the exclusion of evidence and/or other sanctions.

Dated: August 8, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings